

## § 536.308

## 5 CFR Ch. I (1–1–08 Edition)

### § 536.308 Loss of eligibility for or termination of pay retention.

(a) Eligibility for pay retention ceases if any of the following conditions occurs at any time after the employee has received written notification that the employee's pay will be reduced, and entitlement to pay retention terminates if any of the following conditions occurs after the commencement of pay retention:

(1) The employee has a break in service of 1 workday or more;

(2) The employee is entitled to a rate of basic pay under a covered pay system which is equal to or greater than the employee's retained rate (after applying any applicable geographic conversion under paragraph (b) of this section), excluding a rate resulting from a temporary promotion or temporary reassignment;

(3) The employee declines a reasonable offer (as determined under § 536.104) of a position in which the employee's rate of basic pay would be equal to or greater than the employee's retained rate (after applying any applicable geographic conversion under paragraph (b) of this section);

(4) The employee is reduced in grade for personal cause or at the employee's request (based on the actual grade of the employee's position rather than the employee's retained grade and, when a movement to a different covered pay system is involved, a comparison of representative rates under § 536.105); or

(5) The employee moves to a position not under a covered pay system.

(b) When the rate comparison required by paragraph (a)(2) or (3) of this section involves a new or offered position that is located in a different geographic area where different pay schedules would apply to the employee's existing position of record, the agency must convert the employee's existing retained rate using the geographic conversion rules in § 536.303(b) before making the rate comparison. The converted retained rate must be compared to the payable rate of basic pay for the new or offered position in determining whether the rate of basic pay for an offered position is equal to or higher than the employee's retained rate.

(c) Termination of pay retention benefits takes effect—

(1) At the end of the day before placement if the termination is the result of the employee's placement in another position; or

(2) At the end of the last day of the pay period in which the employee declines a reasonable offer.

(d) If an employee's eligibility for pay retention ceases or entitlement to pay retention terminates under this section, the employee's rate of basic pay must be set using the pay-setting rules applicable to the employee's position of record (e.g., 5 CFR part 531, subpart B, for GS positions). However, when an employee's retained rate is terminated under paragraph (a)(2) or (3) of this section and the employee's grade is unchanged, the employee's payable rate of basic pay may not be set below the maximum rate of the highest applicable rate range.

### § 536.309 Converting retained rates on May 1, 2005.

(a) Consistent with section 301(d)(2) of Public Law 108-411, an agency must convert an employee's retained rate or similar rate, as described in paragraph (b) of this section, to a retained rate under this subpart on May 1, 2005. The new retained rate must equal the retained rate in effect on April 30, 2005, as adjusted to include any applicable locality payment under 5 U.S.C. 5304 or similar provision of law.

(b) This section applies to an employee under a covered pay system who, on April 30, 2005, was receiving—

(1) A retained rate under 5 U.S.C. 5363;

(2) A rate paid under the authority of 5 U.S.C. 5334(b) or 5 U.S.C. 5362 which was greater than the maximum rate of basic pay payable for the grade of the employee's position of record; or

(3) A continued rate of pay under 5 CFR part 531, subpart C or G (as contained in the January 1, 2005, edition of title 5, Code of Federal Regulations, parts 1 to 699) which was greater than the maximum rate of basic pay payable for the grade of the employee's position.

(c) The conversion rules in this section must be applied before any simultaneous pay action that takes effect on May 1, 2005.

### **Subpart D—Appeals and Miscellaneous Provisions**

SOURCE: 45 FR 85656, Dec. 30, 1980. Redesignated at 70 FR 31310, May 31, 2005.

#### **§ 536.401 Placement and classification plans.**

(a) Agencies which employ individuals subject to this part are required to establish in writing placement and classification plans.

(b) The placement and classification plans must commit the agency to:

(1) Identify and correct classification errors; and

(2) Correct position management problems; and

(3) Carry out specific planned efforts to place employees subject to this part; and

(4) Pursue placement efforts that do not adversely affect affirmative action goals.

[45 FR 85656, Dec. 30, 1980. Redesignated at 70 FR 31310, May 31, 2005.]

#### **§ 536.402 Appeal of termination of benefits because of reasonable offer.**

(a) Except as provided for in paragraph (e) of this section, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position the grade or pay of which is equal to or greater than his or her retained grade or pay may appeal the termination to the Office of Personnel Management.

(b) An employee who appeals under this section shall file the appeal in writing with the Office of Personnel Management not later than 20 calendar days after being notified that his or her grade or pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.

(c) The Office of Personnel Management may conduct any investigation or hearing it determines necessary to ascertain the facts of the case.

(d) If a decision by the Office of Personnel Management on an appeal under this section requires corrective action by an agency, including the retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.

(e) Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under the negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to the Office of Personnel Management if the grievance procedure of the agreement by which he or she is covered provides for this review.

(f) Decisions issued by the Office of Personnel Management shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must show that the information was not readily available when the decision was issued. A request for reconsideration of an original appeal decision must be submitted to OPM within 30 calendar days of the date of the original decision.

[45 FR 85656, Dec. 30, 1980, as amended at 50 FR 428, Jan. 4, 1985; 50 FR 45389, Oct. 31, 1985. Redesignated at 70 FR 31310, May 31, 2005]

#### **§ 536.403 Documentation.**

The application of the provisions of this part shall be documented in writing as a permanent part of the employee's Official Personnel Folder. As a minimum this documentation will include a copy of the letter described in § 536.404.

[45 FR 85656, Dec. 30, 1980. Redesignated and amended at 70 FR 31310, May 31, 2005.]